

EMANUEL DELEON FIELDS	§	
v.	§	CIVIL ACTION NO. 6:12cv426
DIRECTOR, TDCJ	§	

The Petitioner Emanuel Fields, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Fields challenged disciplinary case no. 20120073134, in which he was convicted of possession of a weapon, receiving as punishment a reduction in classification status and the loss of 180 days of good time credits. Fields acknowledged, and court records confirm, that this is the second federal habeas petition which Fields has filed challenging this same disciplinary case. *See Fields v. Director, TDCJ*, civil action no. 6:12cv39 (E.D.Tex., dismissed with prejudice February 22, 2012, no appeal taken).

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge determined that Fields had failed to show that he had received permission from the Fifth Circuit Court of Appeals to file a successive petition, and a review of the Fifth Circuit's on-line records did not show that Fields had even sought such

permission. Accordingly, the Magistrate Judge concluded that the petition should be dismissed with prejudice until such time as Fields received permission to file a successive petition from the Fifth Circuit Court of Appeals. The Magistrate Judge also recommended that Fields be denied a certificate of appealability.

Fields filed objections to the Magistrate Judge's Report on September 13, 2012. In his objections, Fields first says that he is proceeding *pro se* and without counsel, and so his pleadings should be construed liberally. He next argues the merits of the petition, saying that he wanted his cellmate John Delarosa come and testify that the weapon belonged to Delarosa and not Fields, but the hearing officer arbitrarily refused to permit this evidence; consequently, Fields maintains that this is a violation of Brady v. Maryland, 373 U.S. 83 (1963). Fields acknowledges that Delarosa gave a written statement saying that the weapon belonged to him and not to Fields, and that this statement was read out loud by his counsel substitute at the hearing, but the disciplinary hearing officer arbitrarily and capriciously disregarded it.

However, Fields' objections make no mention of the basis upon which the Magistrate Judge recommended that his petition be dismissed, which is that Fields had previously sought habeas corpus relief on this same claim and has not secured permission from the Fifth Circuit Court of Appeals to file a successive petition, as required by 28 U.S.C. §2244(b)(3), rendering the district court without jurisdiction to consider his petition. Crone v. Cockrell, 324 F.3d 833, 836 (5th Cir. 2003). These objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in the cause, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge (docket no. 6) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice as to its refiling without first obtaining permission from the Fifth Circuit to file a successive petition, but without prejudice as to the refiling of this petition once such permission has been obtained. It is further

ORDERED that the Petitioner Emanuel Fields is hereby DENIED a certificate of appealability *sua sponte*. The denial of this certificate of appealability refers only to an appeal of the present case and shall not prevent Fields from seeking permission for leave to file a successive petition, nor shall it affect his right to pursue his claims once such permission has been obtained. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 19th day of September, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE